IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FOURTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE J.CHELAMESWAR

-

WRIT PETITION NO : 23754 of 1995

Between:

Lalitha Gir, W/o. Chandrakanth Gir,
r/o. H.No.8-2-681/A/1, Road No.12,
Banjara Hills, Hyderabad.

..... PETITIONER

AND

1 The Co-operative Tribunal at Hyderabad, represented by its Registrar, Andhra Pradesh.
2 The Deputy Registrar of Co-operative Societies,
Consumer & Weaker Sections, Hyderabad.
3 The Liquidator, Co-operative Thrupthi Mahila Super Market, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or Direction, more particularly one in the nature of Writ of "Certiorari" calling for the records relating to the Order of the 1st respondent Tribunal in CTA.No.196/94, dated: 18-9-1995 and quash the same as illegal, arbitrary and contrary to the Provisions of the A.P. Cooperative Societies Act and pass

Counsel for the Petitioner: MR.K.PRATAP REDDY

Counsel for the Respondent Nos 1 to 3.: GP FOR COOPERATION

The Court made the following :

ORDER:

The writ petition is filed with the prayer as follows:

> "Issue a Writ, Order or Direction, more particularly one in the nature of

Writ of "Certiorari" calling for the records relating to the order of the 1st respondent Tribunal in CTA.No.196 of 1994, dated: 18.09.1995 and quash the same as illegal, arbitrary and contrary to the provisions of the A.P. Co-operative Societies Act".

2. The petitioner worked as the Managing Director of Trupthi Mahila Co-operative Super Market Secunderabad, which went into liquidation. It is brought to the notice of this Court that the liquidation proceedings are still pending.

3. The petitioner worked from September, 1975 to June, 1985. It is stated in the affidavit that the petitioner had earlier worked for a period of 18 years with the Embassy of United States of America and it is asserted in her affidavit that she was requested by the then Registrar of the Co-operative Societies to take up the job as the Managing Director of the above mentioned society. According to the petitioner, she was appointed by the Managing Committee of the above mentioned society initially on condition paying honorarium of Rs.500/- per month and subsequently by a resolution dated 31.08.1982, the managing committee ratified the payment of an amount of Rs.1500/- per month as honorarium to the petitioner. Admittedly, the petitioner received the honorarium for the above mentioned period.

4. Subsequently, the Registrar, Co-operative Societies by his proceedings in R.C.No. 690/87 C dated 28.03.1994 under Section 60 of the Andhra Pradesh Co-operative Societies Act, 1964 (hereinafter referred to as 'the Act') called upon the petitioner to remit an amount of Rs.1,94,987-08 Ps., within a period of fifteen days from the date of the receipt of the said order, failing which the liquidator of the society will be called upon to initiate the execution proceedings of the said order.

5. Out of the above mentioned amount, an amount of Rs.1,68,500/- pertains to the honorarium received by the petitioner as described earlier. The basis of the order dated 28-03-1994 in this regard is that such a payment of the honorarium is required to be approved by the Registrar of the Co-operative Societies and such an approval was not granted by the Registrar. Various other amounts were also sought to be recovered from the petitioner. However, at the time of the hearing the writ petition, it is submitted by the learned Senior Counsel Sri Pratap Reddy appearing for the petitioner that the petitioner is not contesting the remaining claims.

6. Aggrieved by the surcharge proceedings, dated 28.3.1994, the petitioner has preferred an appeal before the Tribunal. While confirming the surcharge

proceedings in respect of an amount of Rs.1,35,725/-, the Tribunal partly allowed the appeal exempting the petitioner from payment of an amount of Rs.59,200/-.

7. It is an admitted fact that the petitioner was appointed as a Managing Director on payment of honorarium. It is specifically averred in the counter that she received the honorarium without prior approval of the Managing committee and Commissioner for Co-operation and Registrar of Co-operative Societies. Therefore, the question that arises for consideration in this writ petition is as to whether such an amount admittedly received by the petitioner towards her honorarium for the services rendered by her to the Society in liquidation, could be recovered in exercise of the powers under Section 60 of the Act.

Section 60 of the Act reads as follows:

> " **60. Surcharge:**- (1) (Notwithstanding anything contained in any other law for the time being in force) where in the course of an audit under section 50 or an inquiry under Section 51 or an inspection under Section 52 or Section 53, or the winding up of a society, it appears that any person who is or was entrusted with the organization, affairs or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or has been guilty of breach of trust in relating to the society or has caused any deficiency in the assets of the society by breach of trust or willful negligence or has made any payment contrary to the provisions of this Act, the rules or the bye-laws, the Registrar himself, or any person specially authorized by him in this behalf, of his own motion or on the application of the committee, liquidator or any creditor or contributor, may inquire into the conduct of such person or officer or servant and make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorized as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retention, breach of trust, or willful negligence as the Registrar or the person authorized as aforesaid thinks just:
>
> Provided that no order shall be passed against any person referred to in this sub-section unless the person concerned has been given an opportunity of making his representation.
>
> (2) Any sum ordered under this section to be repaid to a society or recovered as a contribution to its assets may be recovered on a requisition being made in this behalf by the Registrar to the Collector in the same manner as arrears of land revenue.

(3) This Section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by his act."

8. Section 60, clearly lays down the circumstances under the proceedings under section 60 of the Act can be launched.

9. It is apparent from the above provision that where in the course of an audit under Section 50 or an inquiry under Section 51 or an inspection under Section 52 or Section 53, or during the process of the winding up of a society, it appears that any person who is or was entrusted with the organization, affairs or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or has been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or willful negligence or has made any payment contrary to the provisions of this Act, the same can be recovered from the incumbent in exercise of the powers under section 60 (2) of the Act.

Be that as it may.

10. It is the consistent case of the petitioner as can be seen from the surcharge proceedings in R.C.No.609/87 C dated 28.03.1994 that the payment of honorarium at the rate of Rs.1500/- per month was sanctioned by the Managing Committee. On the other hand, finding has been recorded either during the course of the surcharge proceedings nor at the appellate stage, to the effect that such payment was not sanctioned by the Managing Committee of the society under liquidation. In the instant case, the only ground on which basis the amount is sought to be recovered under the above provisions, is that the payment of such an amount to the petitioner as honorarium, was not approved by the Registrar of Co-operative Societies.

11. The question as to whether such a payment of the amount to the petitioner, requires prior approval of the Registrar, Co-operative Societies, need not be considered. The question is whether the act of the petitioner in receiving the honorarium amounts to any misdeed as enunciated in section 60 and whether in such a circumstance, the concerned authority is empowered to launch proceedings under section 60 (2) of the Act.

12. It is the case of the petitioner that with the prior approval of the Managing

Committee only, she used to get the honorarium. The affairs of the cooperative society are entrusted to the Managing Committee, which is defined under Section 2 (b) of the Act. The expression "Committee" reads thus:

> "Committee" means the governing body of a society by whatever name called, to which the management of the affairs of the society is entrusted."

13. It is obvious from the definition that the committee is a body to which the management of the affairs of the society is entrusted. The functions of such a management will, of course, be subject to the rules and regulations under the Act. The fact remains that a duty is cast on the Committee to look after the business of the society as well as its administration. The transaction between the petitioner and the society is within the realm of the responsibilities entrusted to the Committee when once the managing committee of the society makes any payment to a third party like the petitioner, under a contract, the receipt of such payment cannot be called either misappropriation, fraudulent retention of money nor can the petitioner be held guilty of breach of trust under Section 60 of the Act.

14. It is an obligation on the part of the Managing Committee to have the prior approval of the Registrar (if really such obligation exists) for payment of honorarium to the petitioner. It is the duty cast upon the committee, but not the petitioner.

15. In the facts and circumstances of the case and in the light of the provisions of Section 60 of the Act, in my view, mere receipt of payment towards the honorarium by the petitioner, does not amount to any mis deed viz., criminal breach of trust or any fraudulent retention of the money of the society etc., as enunciated under the provisions of section 60 of the Act and therefore, the order of the Tribunal in so far as it upheld the surcharge against the petitioner for an amount of Rs.1,35,727.08 is concerned, is liable to be set aside.

16. In the result, this writ petition is allowed setting aside the order of the tribunal in so far as surcharging the petitioner for an amount of Rs.1,35,727.08 is concerned.

24th February, 2005

knk/bud

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this

Thursday, the Twenty Fourth day of February, Two thousand and five.

REGISTRAR

Copy to:

1. The Registrar, Co-operative Tribunal at Hyderabad Andhra Pradesh, Hyderabad.
2. The Deputy Registrar of Co-operative Societies, Consumer & Weaker Sections, Hyderabad.
3. The Liquidator, Co-operative Trupthi Mahila Super Market, Secunderabad.
4. Two C.Cs to the Government Pleader for Co-operation, High Court Buildings, High Court of A.P., Hyderabad. (O.U.T.)
5. Two C.D. Copies.